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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 UNITED STATES OF AMERICA,

6 v. 19-CR-338

7 MOAZU KROMAH and AMARA CHERIF,

8 Defendants.

9 Conference
10 (Via Telephonic)
11 -----x12 New York, N.Y.
13 January 11, 2021
14 9:00 a.m.

15 Before:

16 HON. GREGORY H. WOODS,

17 District Judge

18 APPEARANCES

19 AUDREY STRAUSS
20 Acting United States Attorney for the
21 Southern District of New York
22 BY: JARROD L. SCHAEFFER
23 SAGAR K. RAVI
24 Assistant United States Attorney25 GUY OKSENHENDLER LAW OFFICE
26 Attorney for Defendant Cherif
27 BY: GUY OKSENHENDLER28 LAW OFFICES OF JEFFREY CHABROWE
29 Attorney for Defendant Kromah
30 BY: JEFFREY CHABROWE

31 ALSO PRESENT: LANZY KANDEH, Interpreter (Mandingo)

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1 THE COURT: Is counsel for defendant Cherif on the
2 line?

3 MR. OKSENHENDLER: Yes. Good morning, your Honor.
4 Guy Oksenhendler for Mr. Cherif.

5 THE COURT: And is counsel for Mr. Kromah on the line?

6 MR. CHABROWE: Yes, good morning. Jeff Chabrowe for
7 Mr. Kromah.

8 THE COURT: Let me hear if each of the defendants are
9 on the line and if their respective interpreters are on the
10 line.

11 First, is Mr. Cherif on the line?

12 Is the interpreter for Mr. Cherif on the line, that is
13 Mr. Swaray?

14 Is Mr. Kromah on the line?

15 Is the interpreter for Mr. Kromah on the line, that is
16 Mr. Kandeh? Thank you.

17 The defendants and the interpreters don't appear to be
18 on the line yet. Let's give them a moment.

19 I expect to begin the conference with a brief colloquy
20 with each of the interpreters and to swear them in before I
21 turn to issues related to the CARES Act.

22 (Pause)

23 THE COURT: This is Judge Woods. Has the interpreter
24 for the defendants just joined?

25 THE INTERPRETER: Yes.

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1 THE COURT: Can I ask who this is, please?

2 THE INTERPRETER: My name is Lanzay Kandeh. I'm the
3 interpreter for Kromah and Cherif.

4 THE COURT: Good, thank you. Are you interpreting for
5 both? I understood you were interpreting for just one of the
6 two.

7 THE INTERPRETER: I think --

8 THE COURT: Is he connected to you on the other line?

9 THE INTERPRETER: He was. But there was a
10 misunderstanding. He was connected to me, then he told me I
11 was supposed to translate to his lawyer.

12 OFFICER TORRES: This is Officer Torres from
13 corrections. Amara Cherif is here.

14 THE COURT: This is Judge Woods. Let me just say a
15 few things.

16 For Mr. Cherif, he'll be dialing in to speak with his
17 interpreter. We're doing a simultaneous interpretation for
18 this proceeding. So the facility should be dialing the
19 interpreter on the line that I hope has been coordinated in
20 advance. And then the interpreter will be dialing into this
21 line. Mr. Kandeh is on the line, who I understand is
22 interpreting for Mr. Kromah. Mr. Swaray is supposed to be
23 interpreting for Mr. Cherif. The facility where Mr. Cherif is
24 should be dialing calling to the interpreter who has been
25 designated for Mr. Cherif.

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1 OFFICER TORRES: Okay. So do you want me to dial in
2 to the interpreter?

3 THE COURT: Correct.

4 OFFICER TORRES: Okay.

5 THE COURT: Do you have that number there?

6 OFFICER TORRES: I do.

7 THE COURT: Thank you very much.

8 OFFICER TORRES: You're welcome, sir.

9 THE COURT: Mr. Kandeh, I understood you'll be getting
10 a call from Mr. Kromah's facility. I take it you have not
11 received a call from that facility yet?

12 THE INTERPRETER: I did not.

13 THE COURT: If you don't mind, so we use our time
14 while we're waiting for that call, I would like to engage in a
15 brief colloquy about your work here. It's most important that
16 you connect with Mr. Kromah, so when he does call you on your
17 other line, please, feel free to interrupt me and pick up.

18 I just ask these questions to establish your
19 qualifications. Can I ask you, first, do you swear that the
20 testimony that you'll give to this Court, that is to me, in
21 this matter will be the truth, the whole truth, and nothing but
22 the truth so help you God?

23 THE INTERPRETER: Yes, I do, your Honor.

24 THE COURT: Thank you. Can I ask you please to first
25 say your full name and spell your first and last name slowly.

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1 THE INTERPRETER: Yes. My first name is Lanzy,
2 L-A-N-Z-Y, and my last name is Kandeh, K-A-N-D-E-H.

3 THE COURT: Very good. Thank you very much. Can you
4 please tell me what your native language is, if it's other than
5 English?

6 THE INTERPRETER: That's Mandingo. That's the
7 language I'm supposed to translate.

8 THE COURT: Can you tell me how you learned English?

9 THE INTERPRETER: I went to school. I have an
10 associate's degree, and I've been translating for the past 25
11 years.

12 THE COURT: Thank you. How long have you been
13 speaking English?

14 THE INTERPRETER: I would say my entire life.

15 THE COURT: Thank you. Can I ask of you, have you
16 undergone any formal training in simultaneous or consecutive
17 interpreting?

18 THE INTERPRETER: Yes. That is through the Unified
19 Court System. I also work for the Unified Court System, and
20 I'm even scheduled to work this afternoon.

21 OFFICER TORRES: Excuse me. This is Officer Torres
22 calling back. I called the interpreter -- maybe I'm calling
23 the wrong number that they gave me -- can you give me a number
24 to call the interpreter?

25 THE INTERPRETER: The interpreter is here.

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1 (917) 392-2687.

2 OFFICER TORRES: Thank you.

3 THE COURT: That will work fine, I think. We'll need
4 to get a different number to the MCC. They were trying to get
5 in touch with the other person who is supposed to be
6 interpreting for the defendant here, that's Mr.--

7 THE INTERPRETER: They are calling me.

8 THE COURT: Pick it up. Thank you. Go ahead.

9 (Pause)

10 THE COURT: Has Mr. Kromah joined us?

11 Mr. Kandeh, are you back with us?

12 Let's give him a moment.

13 (Pause)

14 THE COURT: Mr. Kandeh, are you back on the line? I'm
15 not sure where Mr. Kandeh has disappeared to. The other
16 interpreter was lined up to interpret for Mr. Cherif. And as
17 far as I can tell, he's not appeared. My deputy has reached
18 out to him and he is just AWOL at this point. My deputy is
19 working in the background to try to sort this out.

20 (Pause)

21 THE COURT: Mr. Kandeh, are you on the line?

22 Is Mr. Kromah on the line? Mr. Cherif?

23 I do apologize. Let's see if we can find out what is
24 going on.

25 (Pause)

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1 THE DEPUTY CLERK: Judge, I just got off the phone
2 with Mr. Kandeh. He may have gotten disconnected, but he does
3 not have ability to connect the two calls from both facilities.
4 I asked him to dial in to the AT&T bridge so we can proceed
5 with the defendant who we do have on the line currently. The
6 MCC has not yet called him.

7 THE COURT: So Mr. Kromah has not been produced yet.

8 THE DEPUTY CLERK: That's correct.

9 THE COURT: If you can dial in to the bridge, we can
10 start with Mr. Cherif.

11 THE DEPUTY CLERK: He'll be dialing in shortly.

12 THE COURT: Thank you very much.

13 (Pause)

14 THE COURT: This is Judge Woods. Mr. Kandeh?

15 THE INTERPRETER: Yes.

16 THE COURT: Good, thank you. Is Mr. Cherif on your
17 other line with you?

18 THE INTERPRETER: Yes, sir.

19 THE COURT: Very good. If you don't mind, would you
20 ask them to stand by for a moment? I would like to finish our
21 brief conversation before we begin the proceeding itself. Let
22 me know as soon as you're ready to begin, Mr. Kandeh.

23 THE INTERPRETER: Let me talk to him. One minute.

24 Hello, your Honor? He was on the other line, now when
25 I call back he's not answering. So I don't know.

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1 THE COURT: Thank you. Let's see if my deputy can
2 dial the facility and can reach him. If you can leave that
3 line open, Mr. Kandeh, we'll begin as soon as he reappears. In
4 the background my staff will reach out to the facility and they
5 will reconnect.

6 Mr. Kandeh, as we were talking earlier, you were
7 telling me about your formal training in simultaneous and
8 consecutive interpreting. You told me you worked before for
9 the Unified Court System. What type of training have you
10 received?

11 THE INTERPRETER: I worked in several courts. I also
12 have Dutch citizenship, so I live in the Netherlands for the
13 past 25 years. I work there as an interpreter. I also work
14 for the international courts in the Netherlands. And I took
15 part in several interpretation exams, and I successfully
16 passed. I have certificates. I have also worked for the
17 S.D.N.Y. on several occasions. That was before the pandemic.

18 THE COURT: You said that you received certificates in
19 the past. Can you tell me briefly what those are, to the
20 extent you know?

21 THE INTERPRETER: One of them is quality translation.
22 That is from the Netherlands. Here in New York it's an exam
23 administered once a year by the Unified Court System. I also
24 have that certificate. If you don't have that, you can't be in
25 the system. That is how I was able to be in the system for

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1 S.D.N.Y. I also speak several languages, not only Mandingo. I
2 speak seven languages.

3 THE COURT: Thank you very much.

4 Assuming that Mr. Cherif is able to join us, I think
5 your qualifications show you are qualified to conduct
6 simultaneous interpretations for purposes of this proceeding.
7 I would like to ask you to take an oath to translate these
8 proceedings truly and fairly and impartially. So Mr. Kandeh,
9 do you solemnly swear to interpret these proceedings truly,
10 fairly and impartially to the best of your ability, so help you
11 God?

12 THE INTERPRETER: Yes, I do, your Honor.

13 THE COURT: Thank you very much.

14 Now we just need the defendant. When we do have the
15 defendant on the line, Mr. Kandeh, if you can, please, keep
16 this line on mute as you're doing your simultaneous
17 interpretation so we are not disrupted -- or more importantly,
18 so the court reporter can keep a good record of the
19 proceedings. It's very hard to follow what is happening here
20 with the English if we can hear the translation in the
21 background. Please do provide simultaneous interpretation,
22 word for word, in the background.

23 Essex County should be calling you back momentarily,
24 so I was informed by my deputy. I hope we'll be able to begin
25 momentarily.

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1 THE INTERPRETER: Okay. Thank you, your Honor.

2 THE COURT: Thank you.

3 (Pause)

4 THE COURT: Are you ready to proceed?

5 THE INTERPRETER: Yes, I'm ready.

6 THE COURT: Very good. Thank you very much. So --

7 THE INTERPRETER: Sorry. Cherif is on the other line.

8 THE COURT: Very good. I'm going to begin the
9 proceeding now. If you can just interpret simultaneously what
10 I say, I'll turn to you occasionally -- or turn to him
11 occasionally -- if you can respond on his behalf.

12 THE INTERPRETER: Okay. I just want to tell him
13 because he's on the other line.

14 THE COURT: Okay.

15 THE INTERPRETER: Yes, your Honor. We are ready.

16 THE COURT: Thank you very much. If you place your
17 phone on mute, Mr. Kandeh, this line, so we don't hear the
18 translation. Thank you very much.

19 Let's begin. So first, for the benefit of the
20 defendant, let me take appearances again for the defendant so
21 the defendant can hear who is on the line on behalf of each of
22 the parties.

23 First, can I ask who is on the line on behalf of the
24 United States?

25 (Interpretation is heard)

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1 THE COURT: Mr. Kandeh, I'm sorry, can I ask you to
2 place this phone line on mute, the one that is connected to
3 this call, just so we don't hear your interpretation? I heard
4 you. I'm happy you're doing simultaneous, which is excellent.
5 Please put your line on mute. Thank you very much.

6 THE INTERPRETER: Yes.

7 THE COURT: Who is on the line for the United States?

8 MR. SCHAEFFER: Good morning, your Honor. Jarrod
9 Schaeffer for the United States.

10 THE COURT: Thank you. Who is on the line on behalf
11 of Mr. Cherif?

12 MR. OKSENHENDLER: Good morning, your Honor. Guy
13 Oksenhendler for Mr. Cherif.

14 THE COURT: Thank you. I understand that counsel for
15 Mr. Kromah is on the line. Counsel, please identify yourself.
16 Counsel for Mr. Kromah?

17 MR. CHABROWE: Jeff Chabrowe. I was on mute. I'm
18 sorry.

19 THE COURT: We've all done that.

20 To begin, we're in the midst of the Covid-19 pandemic.
21 I'm conducting this proceeding pursuant to the authority
22 provided by Section 15002 of the CARES Act and the Standing
23 Orders issued by the our Chief Judge pursuant to that Act.
24 Counsel are appearing before me by telephone. The defendant is
25 also participating by telephone through an interpreter.

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1 Let me just ask, Mr. Cherif. Mr. Cherif, are you able
2 to understand what the interpreter is saying to you here?

3 THE DEFENDANT: Yes, the hearing is in progress.

4 THE INTERPRETER: Your Honor, there is a little bit of
5 confusion. On the other line Mr. Cherif is there but now --
6 can you hold on? On the other line is Mr. Kromah, not
7 Mr. Cherif.

8 THE COURT: Oh, that's interesting. Very interesting.
9 Do you not have Mr. Cherif?

10 THE INTERPRETER: Is Mr. Cherif there with you, sir?
11 That's the other defendant.

12 THE COURT: That's fine. Let's begin with Mr. Kromah.

13 THE INTERPRETER: Okay.

14 THE COURT: The lawyer is on the line, as you just
15 heard. I understand that you dialed into --

16 THE INTERPRETER: He said it's no problem to start
17 with Mr. Kromah. Okay.

18 THE COURT: Thank you. Mr. Kandeh, I understand that
19 you dialed into this call perhaps with a --

20 THE INTERPRETER: Your Honor, can I translate to him
21 first? He just came on the line.

22 THE COURT: That we'll proceed with Mr. Kromah? Yes,
23 please do.

24 THE INTERPRETER: Okay.

25 THE COURT: Let's begin.

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1 Mr. Kandeh, if I can ask you to mute whatever phone
2 you've used to dial into this conference.

3 THE INTERPRETER: I just did. I just mute the other
4 phone.

5 THE COURT: You should mute this phone because, as
6 you're interpreting -- so let me just describe how I expect the
7 work flow today.

8 I'll be speaking here. While I'm speaking here,
9 you'll be providing UN-style simultaneous interpretation to the
10 defendant. So that he can hear the simultaneous interpretation
11 that you're providing, that phone will need to have an open
12 line. So we do not hear what you're saying to him
13 simultaneously, you'll need to mute the line.

14 THE INTERPRETER: Okay. It's a little bit tricky
15 because it's different.

16 THE COURT: Let me know when you're ready to proceed.

17 (Pause)

18 THE COURT: Mr. Kandeh, please let me know when you're
19 ready to proceed. Mr. Kandeh, are you there? Mr. Kandeh, if
20 you're there, can you please respond? Mr. Kandeh, are you on
21 the line? If so, can you please respond?

22 (No response)

23 THE COURT: My apologies, counsel. My deputy is
24 working to connect with Mr. Kandeh in the background here. I'm
25 not certain what is happening. I'll let you know as soon as we

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1 have information. My deputy is working to see what she can do
2 to work this out.

3 Just a point of information. My deputy is dialing to
4 Mr. Kandeh's phone and it's going through to voicemail.

5 Mr. Kandeh, if you're on the line, can you please
6 respond? If you're on the line you may have your phone on
7 mute. Please take it off mute for purposes of responding to my
8 inquiry.

9 Mr. Kandeh, are you on the line?

10 Mr. Kandeh, this is Judge Woods. If you're on the
11 line, can you please unmute the phone, the phone to which
12 you're hearing my voice? If you are hearing my voice, let me
13 know that you're on the line. Mr. Kandeh, are you on the line?

14 (No response)

15 THE COURT: I'm going to ask my deputy to reach out to
16 Mr. Kandeh.

17 Is that Mr. Kandeh joining the line?

18 (Pause)

19 THE COURT: Mr. Kandeh, are you on the line?

20 Again, counsel, I apologize. I don't understand what
21 happened with our interpreter here. My deputy is reaching out
22 to the facilities to see if we can figure out from the back end
23 of what is happening; in other words, is Mr. Kromah on the line
24 with someone. I'll let you know as soon as I know.

25 At some point, unfortunately, we'll have to call in

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1 and reschedule. But I want to give this time to sort itself
2 through, if we can work it out, so we can complete this
3 proceeding today. I very much want to do that. I apologize
4 for what is a misuse of our time, so please bear with us.
5 Thank you.

6 This is Judge Woods. Again, let me see if Mr. Kandeh
7 is on the line.

8 Mr. Kandeh, are you there? If so, please, take your
9 phone off mute and respond.

10 Mr. Kandeh, are you there? Mr. Kandeh, if you're
11 there, please take your phone off of mute and respond.

12 (No response)

13 THE COURT: I understand Mr. Kandeh should be dialing
14 in momentarily. If I understand, now Mr. Cherif is on the
15 line. We never heard from Mr. Kromah. I'll inquire about that
16 when he joins us. I apologize. Please bear with us.

17 Has Mr. Kandeh rejoined the call? Mr. Kandeh, are you
18 on the line? Mr. Kandeh, are you on the line? If so, take
19 your phone off mute and respond. Mr. Kandeh, this is Judge
20 Woods. Is that you?

21 THE INTERPRETER: Yes, that's me. Your Honor, I think
22 something went wrong and I went back. I just spoke to the
23 defendant, Mr. Kromah. I just heard that the other interpreter
24 didn't turn up. So I'm the only one. So it's a little bit
25 back and forth. But I was able to put the phone back on mute

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1 and then I went back but I couldn't hear anything.

2 THE COURT: Thank you. So let me just make sure I
3 know what is happening right now in terms of who you are in
4 touch with at the facility. So you're connected to this line.
5 Which defendant is connected to you on your other phone?

6 THE INTERPRETER: That's a good question. I'm with
7 Kromah on the other line.

8 THE COURT: Thank you. So Mr. Kromah is on the other
9 line?

10 THE INTERPRETER: Yes, sir.

11 THE COURT: Great. And then you said that something
12 about the other defendant --

13 THE INTERPRETER: The other defendant, exactly, he was
14 on the other line before, but now I have Kromah on the other
15 line. I think they switched the defendants.

16 THE COURT: Thank you. So let's just begin,
17 understanding that Mr. Kromah is on the line. We will begin
18 with a number of introductory remarks. I'll turn to Mr. Kromah
19 to ask him questions. If you would do what we discussed
20 earlier, please, and place this line on mute so you can
21 interpret simultaneously to the defendant. I expect that you
22 would take this line off of mute when you're responding on
23 behalf of the defendant by interpreting his words to us.

24 Let me begin fresh. We're in the midst of the
25 Covid-19 pandemic. I'm conducting this proceeding pursuant to

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1 the authority provided by Section 15002 of the CARES Act and
2 the Standing Orders issued by our Chief Judge pursuant to that
3 Act.

4 The counselors are appearing before me by telephone.
5 The defendant is not here, but Mr. Kromah is participating by
6 telephone. I've already heard from each of the individual
7 lawyers who are present.

8 So let me ask Mr. Kromah. Mr. Kromah, can you hear
9 and understand what the interpreter is saying to you?

10 THE DEFENDANT: Yes, your Honor. I understood the
11 interpreter. Everything is clear.

12 THE COURT: Mr. Kromah, please let me know immediately
13 if you have any difficulty hearing me or an attorney through
14 the interpreter.

15 Let me say a few brief words about the protocol I'd
16 like the parties to follow during this conference. First, I
17 want you to remember that this is a public proceeding. Members
18 of the public and press are welcome to join the conference at
19 any time. Keep that in mind.

20 The second thing is, state your name each time that
21 you speak during the conference. That will help us keep a
22 clear record of the conversation. It will also permit the
23 interpreter to tell Mr. Kromah, who is on the line, who is
24 speaking, who's speaking if he's interpreting.

25 Keep your phones on mute at all times except when

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1 you're addressing the Court.

2 Fourth, please do anything that our court reporter
3 asks you to do in order to help us keep a clear record of the
4 conversation.

5 Fifth, I'm ordering no recording or rebroadcast of all
6 or any portion of the conference.

7 I scheduled this as a conference with respect to the
8 status of this case. What I'd like to do is to begin with a
9 brief colloquy, however, regarding the means by which this
10 proceeding is taking place. We are conducting by remote
11 means --

12 THE INTERPRETER: Your Honor, sorry for the
13 interrupting. There is another call coming in, I think from
14 the facility there. I don't know if I should answer. It,
15 maybe it's the other defendant.

16 THE COURT: Thank you. I'll ask my -- do you have the
17 capacity to join both defendants to the same line?

18 THE INTERPRETER: The line just broke off because I
19 was asking permission first from you.

20 THE COURT: That's fine.

21 THE INTERPRETER: Let me answer. They are calling
22 back.

23 THE COURT: Thank you. Mr. Kandeh --

24 THE INTERPRETER: Hello?

25 THE COURT: We're here.

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1 THE INTERPRETER: Now I have Mr. Cherif on the line.
2 And I had Mr. Kromah on the line before. And the line just --
3 I don't know what happened. They disconnected Mr. Kromah. So
4 I have Mr.-- let me see if I can connect both of them on the
5 same line.

6 Hello? Your Honor?

7 THE COURT: Yes, Mr. Kandeh, we're here.

8 Mr. Kandeh? Mr. Kandeh, are you on the line?

9 THE INTERPRETER: Can you hear me, sir?

10 THE COURT: Yes. Can you hear me?

11 THE INTERPRETER: Yes, I can hear you. I have both of
12 them on the line, Mr. Kromah and Mr. Cherif. Can I just
13 translate to them what you were saying before so they will --

14 THE COURT: Let me start at the beginning now that we
15 have both defendants on the line and we will do this from the
16 beginning. If you can provide simultaneous translation to both
17 defendants, please do that. I'm going to start at the
18 beginning so each of them can hear.

19 Mr. Kandeh, since you have both of the defendants on
20 the other line, when you provide interpreting services --

21 THE INTERPRETER: I would like to make sure that both
22 of them are still on the line. Do you have one minute? Let me
23 double-check to make sure.

24 THE COURT: Yes, please, do.

25 THE INTERPRETER: Hello? Yes. I have both of them on

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1 the line, so you can start.

2 THE COURT: Very good. Let's begin. You can place
3 this line on mute as you're providing simultaneous translation.

4 Counsel, with apologies, I'm going to begin at the
5 very beginning here to make sure that both of the defendants
6 have heard everything.

7 (Interpretation is heard)

8 THE COURT: Mr. Kandeh, keep this phone on mute, if
9 you would, that would be helpful.

10 With apologies, but in order to ensure that each of
11 the defendants have heard everything here, I'd like to start at
12 the beginning, which includes asking for the parties to state
13 their appearances so the defendants can hear that.

14 First, who is on the line for the United States?

15 MR. SCHAEFFER: Good morning, your Honor. Jarrod
16 Schaeffer and Sagar Ravi for the United States.

17 THE COURT: Thank you. Who is on the line on behalf
18 of Mr. Kromah?

19 MR. CHABROWE: Jeff Chabrowe for Mr. Kromah. Good
20 morning.

21 THE COURT: Thank you. Who is on the line on behalf
22 of Mr. Cherif?

23 MR. OKSENHENDLER: Good morning, your Honor. Guy
24 Oksenhendler for Mr. Cherif.

25 THE COURT: Thank you very much. Let me say a few

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1 brief words about the rules I want the parties to follow during
2 this conference. At the outset I remind you this is a public
3 proceeding. Any member of the public or press is welcome to
4 join the conversation. So we're conducting this proceeding by
5 telephone. Please be aware that it is a public proceeding.

6 Second, please, state your name each time that you
7 speak during the conference. That, I expect, will help our
8 court reporter keep a clear record of the conversation. It
9 will also tell our interpreter who is speaking so he can tell
10 that to the defendants as he's providing his interpretation
11 during today's proceeding.

12 Third, keep your phones on mute at all times except
13 when you are addressing the Court or another party. That will
14 help us avoid unnecessary background noise.

15 Fourth, if our court reporter asks you to do something
16 that will make it easier for her to do her job, please do it to
17 the extent that you can.

18 Fifth, and finally, I'm ordering there be no recording
19 or rebroadcast of any or all of today's proceeding.

20 We're conducting today's proceeding by remote means
21 because we are in the midst of the Covid-19 pandemic. I'm
22 conducting this proceeding pursuant to the authority by Section
23 15002 of the CARES Act and the Standing Orders issued by the
24 Chief Judge pursuant to that Act.

25 Counsel are appearing before me by telephone. The

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1 defendants are each participating by telephone through a
2 separate line, by which they are connected to the interpreter.
3 I've already heard each of the lawyers respond to me and I
4 understand that each of them can hear and understand what I'm
5 saying. Let me turn to each of the defendants in turn, just to
6 make sure that they can hear and understand the translation of
7 today's proceeding.

8 First, Mr. Kromah, are you able to hear and understand
9 the interpretation of today's proceeding?

10 DEFENDANT KROMAH: I understood the interpreter, your
11 Honor, and everything is clear.

12 THE COURT: Thank you. Mr. Cherif, are you able to
13 understand the interpretation of today's proceeding?

14 DEFENDANT CHERIF: Okay. Yes, your Honor. I can
15 hear. I understood and hear the interpreter, but I don't hear
16 your voice, only the voice of the interpreter.

17 THE COURT: Thank you. Understood. Let me ask each
18 of the people who are participating in the conference, let me
19 know if you have any difficulty --

20 Mr. Kandeh, keep this line on mute.

21 THE INTERPRETER: Your Honor, Mr. Cherif is saying
22 that he would like to hear your voice if that is possible.

23 THE COURT: Thank you. The answer is no,
24 unfortunately we don't have that ability.

25 So for each of the defendants let me know immediately

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1 if you have any difficulty hearing or understanding anything
2 that is said here today.

3 Now, I scheduled this as a status conference for this
4 case. What I'd like to do is just to say a brief few words and
5 engage in brief colloquy with defendants' counsel to ensure
6 that each of them is aware of the reasons why we're conducting
7 this proceeding by remote means and they are willing to consent
8 to remote means. At the outset let me just say that the
9 defendants are not able to appear here as a result of the
10 Covid-19 pandemic. I have requested that we conduct this
11 proceeding by videoconference. Unfortunately, the facility in
12 which Mr. Kromah is detained has very limited videoconferencing
13 capacity. The same is true where Mr. Cherif is detained. I
14 was unable to get videoconferencing capacity for purposes of
15 conducting this conference. And because I was denied requests,
16 I find that videoconferencing is not reasonably available for
17 purposes of conducting this proceeding. Instead we're
18 conducting the proceeding by telephone. And as we've heard,
19 each of the defendants are able to hear and understand what the
20 interpreter is saying to them by telephone during this
21 conference.

22 I've received from each of the defendants here a
23 written waiver of right to be present at a criminal
24 proceeding -- that is, this criminal proceeding.

25 I want to turn to each of the defendants' counsel just

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1 to confirm that the defendant was advised of his right to
2 appear at the hearing, that he understands the right, and he
3 voluntarily gave up those rights.

4 I'll begin with counsel for Mr. Kromah. Can I ask you
5 to please describe how the document, which is the consent form,
6 which has been provided to me -- it is undated, but it provides
7 that the defendant, Mr. Kromah, has voluntarily consented to
8 participate in this proceeding via either videoconferencing or
9 telephone conferencing. It is signed by Mr. Chabrowe and it
10 appears that a signature has been affixed on behalf of
11 Mr. Kromah.

12 Counsel for Mr. Kromah, can I ask if you're familiar
13 with the document to which I'm referring? Second, can you tell
14 me how this document was provided to the defendant and the
15 circumstances in which you discussed it with him?

16 MR. CHABROWE: Your Honor, I have discussed this with
17 Mr. Kromah and that we would be proceeding with these
18 conferences, both this one and the last one, virtually due to
19 the fact that we cannot appear live in court. And he consented
20 to doing these virtually. I signed this for him and submitted
21 it.

22 THE COURT: Thank you. Did you explain to the
23 defendant that he had a right to be present in court for
24 criminal proceedings?

25 MR. CHABROWE: Yes.

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1 THE COURT: Do you believe based on your conversations
2 he understood that right and was willing to give up that right?

3 MR. CHABROWE: I do.

4 THE COURT: Thank you. Did an interpreter assist you
5 in communicating with the defendant?

6 MR. CHABROWE: I spoke to Mr. Kromah. I've spoken to
7 Mr. Kromah both with an interpreter, Mr. Swaray actually, as
8 well as just without an interpreter. Mr. Kromah is able to
9 speak a decent amount of English. We always thought it was
10 best to have an interpreter for legal calls.

11 THE COURT: Thank you. Go ahead, counsel.

12 MR. CHABROWE: That was it, your Honor.

13 THE COURT: That's fine. Counsel, is this your
14 signature on the document? I understand that you also signed
15 Mr. Kromah's signature; is that right? This is your signature?

16 MR. CHABROWE: Yes.

17 THE COURT: And you signed on behalf of Mr. Kromah?

18 MR. CHABROWE: Yes.

19 THE COURT: Thank you.

20 Let me turn briefly to Mr. Kromah. Mr. Kromah, did
21 you hear what your attorney just said to me through the
22 interpreter.

23 THE INTERPRETER: Hello?

24 THE COURT: Mr. Kandeh?

25 THE INTERPRETER: Yes, I'm here.

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1 THE COURT: Did you get a response from Mr. Kromah to
2 the question, did you hear what your attorney said to me?

3 THE INTERPRETER: He said he did.

4 THE COURT: Thank you. Mr. Kromah, is it true you
5 consent to proceed with this hearing by remote means?

6 DEFENDANT KROMAH: Yes, I consent to it.

7 THE COURT: Let me turn to counsel for Mr. Cherif.
8 Counsel, I have a copy of a consent form that was also undated,
9 that is signed by you on behalf of defendant Cherif in which he
10 voluntarily consents to participate in proceeding by
11 videoconferencing.

12 First, I'd like to ask under what circumstances you
13 discussed this document with the defendant. I also want to
14 confirm that while the form is a consent to proceed by
15 videoconference, that the defendant is willing to proceed also
16 by telephone as we are here today. Counsel for Mr. Cherif?

17 MR. OKSENHENDLER: Thank you, Judge. Over the course
18 of three hours on Friday, after attempting all week to schedule
19 a telephone conference with my client, I was finally able to
20 speak with him around 3:00 on Friday, after initially having a
21 12:00 scheduled call. I had the other Mandingo interpreter
22 that the Court had advised us was available assisting me on the
23 telephone call. I had explained to Mr. Cherif that under
24 normal circumstances he has an absolute right to appear in
25 court and that I would be present there with him, present in

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court. But that under the circumstances that a special provision was being made by the Court to ensure the safety and health of court staff and the defendants and attorneys. And that if he would agree, he could waive his right to appear in court and consent to appear by video or telephone. I think on the form I wrote telephonic as well as video. He agreed that it would be in his interest to waive his right to appear personally and that he would consent to appear by telephone in this instance, even though earlier in the week the Court was unsure whether it would be video or by telephone. And it is my understanding that under the CARES Act and supplemental statutes that have been signed that your Honor has the authority to sign my client's name with his permission on these forms as it was impossible for me to see him personally at the jail. And all of this was explained to him with the assistance of the Mandingo interpreter.

THE COURT: Very good. Thank you very much, counsel.

Let me turn to Mr. Cherif. Mr. Cherif, did you just hear what your attorney said through the interpreter?

DEFENDANT CHERIF: Yes, it's correct, your Honor.

THE COURT: Thank you. So Mr. Cherif, I have a document in front of me that's been signed by your lawyer pursuant to which you voluntarily consent to participate by either videoconferencing or by telephone.

DEFENDANT CHERIF: Your Honor, it's correct what my

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1 lawyer stated, everything is correct.

2 THE COURT: Thank you. Mr. Cherif, the document has
3 been signed by your attorney. Do you have any objection to me
4 signing your name as well to this document?

5 DEFENDANT CHERIF: Yes, confirm. I give you
6 permission.

7 THE COURT: Thank you very much. I'll do just that.

8 Let's now begin with the substance of the conference.
9 Because I'm able to find on the basis of the proffers by
10 counsel and the comments by each of the defendants that each of
11 the defendants has knowingly consented to this telephonic
12 proceeding pursuant to the CARES Act, I find that the Court may
13 conduct this proceeding, and that each of the defendants
14 knowingly waived the right to be physically present at this
15 proceeding.

16 Let's begin with a discussion of where we are with
17 respect to this case. Counsel for the United States, what can
18 you tell me about the status of the case?

19 MR. SCHAEFFER: Thank you, your Honor. This case, as
20 you know, has been pending since approximately 2019.

21 Mr. Kromah was extradited long before Mr. Cherif. Mr. Cherif
22 was only just extradited in April of this year, which was
23 during the pandemic. At this point the government has produced
24 discovery to both defendants. That discovery is quite
25 voluminous. I believe counsel has required a large amount of

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1 time to review it. They have had time to review it for an
2 extensive amount of time.

3 The government is currently in plea discussions with
4 counsel for Mr. Kromah. We expect those discussions may be
5 concluded by the end of this week.

6 And the government would also be interested in setting
7 a motion schedule for both defendants, allowing sufficient time
8 for both those discussions and any discussions with counsel for
9 Mr. Cherif.

10 THE COURT: Thank you very much. Counsel for the
11 United States, before we turn to each of the lawyers for the
12 defendants, you said that the discovery has been produced. Can
13 you tell me when the government completed its production of
14 discovery to the defendants?

15 MR. SCHAEFFER: Yes, your Honor. Let me confirm the
16 date. The bulk of discovery was produced earlier this year
17 during the pandemic with Mr. Cherif. It was produced a couple
18 months after he was extradited. As Mr. Oksenhendler noted last
19 time, there was an issue getting that discovery to the
20 defendant at the prison. But the government did arrange to
21 have it hand-delivered so he can review it as well.

22 The government does not understand that there was any
23 difficulty in that discovery being delivered to
24 Mr. Oksenhendler.

25 The most recent production of discovery in this case

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1 was made to the defendant in November, November 12, of
2 additional material that was received during the course of the
3 government's investigation. That included some large
4 electronic devices that had been processed and has taken some
5 time to process. The search warrants appending those had been
6 produced prior to that. There may be some additional data from
7 that production that has yet to get to defense counsel, not
8 because it hasn't been produced by the government or made
9 available, but simply because we're waiting on a drive from
10 defense counsel to copy it over.

11 The government has made several productions since
12 July 2019. The bulk of discovery was produced to counsel for
13 Mr. Kromah as of August 2019. And then the bulk of discovery
14 was produced to counsel for Mr. Cherif as of June 2020
15 following his extradition.

16 THE COURT: Thank you very much. So I'd like to turn
17 to each of the defendants. I want to hear from each of you,
18 counsel, what your view is and what the best approach is.
19 Counsel for the United States suggested we set a motion
20 schedule. I'd like to hear from each of you if there are
21 motions that are anticipated here; and if so, I'd like to get a
22 sense of what the nature of those motions might be, which will
23 help us with scheduling those. And, in part, it will help me
24 know whether a hearing may be warranted with respect to any of
25 the anticipated motions. Let me begin with --

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1 MR. OKSENHENDLER: I'm sorry.

2 THE COURT: Go ahead.

3 MR. OKSENHENDLER: On behalf of Mr. Cherif. As the
4 government noted, Mr. Cherif was brought over in the spring.
5 And I received the first tranche of discovery in the very
6 beginning of the summer. There was a delay due to no fault of
7 the government at all in getting a copy of the discovery to my
8 client. There were problems at the jail. Things were
9 disappearing. And the government went above and beyond to
10 hand-deliver a copy of all the discovery to the jail for my
11 client's benefit, which was greatly appreciated. My client is
12 still reviewing the voluminous discovery.

13 Even though we've discussed it, there is a loss here
14 in the millions of dollars. And in my review of the discovery,
15 I'm trying to figure out where that loss number -- what actions
16 are attributable to my client that go toward that loss number.

17 And we are also engaging in negotiations to perhaps
18 resolve the case prior to a trial. There are plea negotiations
19 going on.

20 So I would suggest to your Honor that perhaps it is a
21 bit premature to set a motion schedule and that perhaps it
22 would be wise to set another conference date 45 to 60 days out,
23 which would allow some anticipated meetings that I am going to
24 have with my client. The first one is going to be this
25 Thursday where I'm going to get to see him in person. My

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1 doctor has finally given me clearance to -- I had a heart
2 attack a number of years ago, so my doctor was a bit concerned
3 with me heading to the jails. I have an appointment to see him
4 this Thursday to discuss a number of things.

5 So I think that my client would benefit by not setting
6 a motion schedule and us reconvening, like I suggested, in 45
7 to 60 days, and perhaps be able to resolve this case without
8 motions and short of trial.

9 THE COURT: Thank you, counsel. Let me hear from
10 counsel for Mr. Kromah. Counsel, what is your view?

11 MR. CHABROWE: Your Honor, I'm in a little bit of
12 different position than Mr. Oksenhendler. Mr. Kromah was
13 arrested first and the case is ongoing. I came in over the
14 summer, in the beginning of the summer. I have gone over the
15 discovery. It's just been difficult to speak to Mr. Kromah
16 because I was setting up phone calls, which are not easy to
17 set. MCC was only open for a brief period. I was only able to
18 meet with Mr. Kromah once before it was closed again, and it is
19 still closed. I don't foresee doing any motions.

20 I would agree with Mr. Oksenhendler of just wanting to
21 have one more status conference with the time period that he
22 suggested.

23 THE COURT: Thank you very much. Counsel for the
24 United States, counsel for each of the defendants have proposed
25 that we reconvene for what will be a streamlined status

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1 conference in about two months. Any objections to that
2 proposal, counsel?

3 MR. SCHAEFFER: No, your Honor. The government's only
4 concern is ensuring that the case is moving expeditiously. If
5 both counsel, as they have indicated, believe that another
6 status conference may resolve any issues or may be useful, then
7 the government has no objection.

8 THE COURT: Thank you very much. I'm going to accept
9 that proposal and will propose that we schedule another status
10 conference on Monday, March 15, 2021, at 9:00 a.m. My
11 expectation for planning purposes --

12 MR. OKSENHENDLER: Sorry, Judge. What was the date?

13 THE COURT: March 15, 2021. My expectation would be
14 to conduct the proceeding by remote means as well. Of course
15 if either defendant does not wish to proceed in that way,
16 please, don't hesitate to let me know that and we'll absolutely
17 respect any requests by the defendants to conduct a proceeding
18 in person. But for scheduling purposes, as a default, I'll
19 assume that we're conducting it by remote means as well.

20 Counsel, I would ask if that's the case, for you to
21 submit an appropriate consent form for a remote proceeding on
22 that date. Let me confirm that each of you are available for
23 that date. First, counsel for the United States?

24 MR. SCHAEFFER: Yes, your Honor, that's fine.

25 THE COURT: Thank you. Counsel for Mr. Kromah?

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1 MR. CHABROWE: Yes, your Honor.

2 THE COURT: Thank you. Counsel for Mr. Cherif?

3 MR. OKSENHENDLER: Your Honor, I'm scheduled to begin
4 a multi-defendant trial before Judge Furman on March 7.
5 Although it's a firm date, I don't know that we're going to be
6 proceeding on that date. It's dependent upon lots of things.

7 THE COURT: Let me do this. Let's keep this date.
8 I'm not handicapping the likelihood that your trial will go
9 forward in making this decision. It may be prudent to lock
10 down the date while we have the chance. If that becomes a
11 conflict, I'm happy to consider adjourning the conference. The
12 parties should write me jointly requesting an adjournment and
13 stating your positions with respect to further exclusion of
14 time.

15 At that conference, my expectation is that we will set
16 a motion schedule and, to the extent we can, a trial date.
17 Given Covid-19 conditions, that may be a day relatively far
18 down the road. I'll look to the parties about suggestions
19 about appropriate scheduling for the trial.

20 We'll reconvene on March 15, 2021, at 9:00 a.m. My
21 hope is that at that time counsel will be prepared to let me
22 know if there are any motions, and that we'll set a motion
23 schedule and a trial date to the best of our ability given the
24 uncertainties associated with the pandemic.

25 Is there anything else that any party would like to

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1 raise to the Court's attention other than the Speedy Trial Act
2 clock before we adjourn?

3 Let me begin with counsel for the United States.
4 Counsel?

5 MR. SCHAEFFER: No, thank you very much.

6 THE COURT: Thank you.

7 MR. CHABROWE: Nothing for Mr. Kromah, thank you.

8 THE COURT: Counsel for Mr. Cherif?

9 MR. OKSENHENDLER: Nothing further.

10 THE COURT: Thank you very much. Counsel for the
11 United States, is there an application with respect to the
12 exclusion of time?

13 MR. SCHAEFFER: Yes, your Honor. The government would
14 ask to exclude time between now and March 15, the date of the
15 next status conference, to allow the parties to continue any
16 discussions about a pretrial resolution of the matter as to
17 Mr. Kromah and Mr. Cherif and allow counsel for both defendants
18 to review discovery and determine what, if any, motions they
19 need to file.

20 THE COURT: Thank you very much. Counsel for
21 Mr. Kromah, do you consent to the exclusion of time?

22 MR. CHABROWE: I do, your Honor. Thank you.

23 THE COURT: Counsel for Mr. Cherif, do you also
24 consent to the exclusion of time?

25 MR. OKSENHENDLER: Yes, we do.

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THE COURT: Thank you very much. I will exclude time from today until March 15, 2021.

After balancing the factors specified in 18 United States Code Section 3161(h)(7), I find that the ends of justice served by excluding such time outweigh the best interests of the public and each of the defendants in a speedy trial because it will allow time for the continued review of the extensive discovery materials by each of the defendants, time for defendants to consider whether there are any grounds for motion practice here, and time for the parties to potentially negotiate a pretrial disposition of this matter.

Very good. Thank you all very much. I apologize for the amount of time it took for us to get to this step. It was a relatively straightforward conference. I appreciate all of your patience. I will do what I can to help us be more efficient in the next conference.

Thank you all very much. This proceeding is adjourned.

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